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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,131	01/22/2002	Michael R. Grubbs	N-8076	1527

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WADDEY & PATTERSON
414 UNION STREET, SUITE 2020
BANK OF AMERICA PLAZA
NASHVILLE, TN 37219

EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,131

Applicant(s)

GRUBBS ET AL.

Examiner

Joseph C Rodriguez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16, 18-32 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) 59-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16, 20-23, 26, 27 and 30-32 is/are rejected.
- 7) ☒ Claim(s) 18, 19, 24, 25, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

Final Rejection

Applicant's arguments filed 6/30/03 have been fully considered but they are not persuasive for reasons detailed below.

The prior art rejections are maintained or modified as follows:

Claims 16, 20-23, 27 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hristozov et al. ("Hristozov")(US '108) in view of McGarvey (US '894).

Hristozov teaches a sorting apparatus (Fig. 1) comprising an acceleration conveyor (4) with a pinning structure (vacuum holding down items), a sensor (1), a product conveyor (14), a transition (between 4 and 14), a transition plate (8), a blowing system (near 7), and an ejector (3).

Hristozov as set forth above thus teaches all that is claimed except for expressly teaching a specific positioning of the product conveyor and sensor. The mere positioning of common elements, however, is well-known in the sorting and conveying arts and can be regarded as a mere design choice. For instance, McGarvey teaches a sorting apparatus including a sensor (24) *directly above* the acceleration conveyor and a product conveyor (42) oriented *in the same direction* as said acceleration conveyor (Fig. 1). Moreover, McGarvey teaches this type of positioning is a well-known equivalent to the positioning taught by Hristozov (col. 3, 42-55). Further, the aligned conveyors provide the common sense advantage of keeping the sorted objects similarly situated. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Hristozov as taught

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above as the mere positioning of well known features in often-used positions can be regarded as a mere design choice to one with ordinary skill in the art.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hristozov et al. ("Hristozov")(US '108) in view of McGarvey (US '894) as applied to claims 16, 20-23, 27 and 30-32 above, and further in view of what is well known in the conveying arts.

Hristozov in view of McGarvey as set forth above teach all that is claimed except for expressly teaching a specific conveying speed. This feature, however, is well-known in the sorting and conveying arts and Examiner takes Official Notice that it would be well known to convey items for sorting at the claimed speed. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Hristozov in view of McGarvey as taught above.

Allowable Subject Matter

Claims 18, 19, 24, 25, 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Election/Restrictions

Claims 59-64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 12.

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

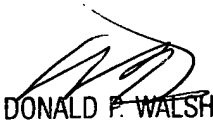
The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571** or **703-308-6552**.

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

November 17, 2003


DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600